

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7466

Investigation into Petition Filed by Vermont Department)
of Public Service Re: Energy Efficiency Utility Structure)

Order entered: June 19, 2009

ORDER RE BIFURCATION

I. INTRODUCTION

On June 5, 2009, International Business Machines Corporation ("IBM") filed a letter asking the Public Service Board ("Board") to bifurcate this proceeding, such that the first phase would focus on the model to be used for the Energy Efficiency Utility ("EEU") overall structure (contract versus appointment), and the second phase would address the specifics of the selected model. IBM requested that the Board rule on its request expeditiously so that parties can address the appropriate issues in their direct testimony which at that time was due to be filed on June 12, 2009.¹

On June 15, 2009, Associated Industries of Vermont ("AIV"), Conservation Law Foundation ("CLF"), the Vermont Department of Public Service ("DPS"), and Vermont Energy Investment Corporation ("VEIC") separately filed comments on IBM's request to bifurcate this proceeding. On June 16, 2009, Central Vermont Public Service Corporation ("CVPS"), Green Mountain Power Corporation ("GMP"), the Group of Municipal Electric Utilities ("GMEU")² and the Vermont Electric Power Company, Inc. ("VELCO") separately filed comments on IBM's request. AIV supports IBM's request to bifurcate this proceeding. CLF, CVPS, the DPS, GMP, GMEU, VEIC and VELCO oppose bifurcation.

1. At the time IBM filed its letter, the direct testimony was due on June 12, 2009. In a memorandum issued on June 9, 2009, the Board extended the due date for filing direct testimony until June 26, 2009.

2. The Group of Municipal Utilities includes: Barton Village Inc. Electric Department; Village of Enosburg Falls Water & Light Department; Town of Hardwick Electric Department; Village of Hyde Park Electric Department; Village of Jacksonville Electric Company; Village of Johnson Water & Light Department; Village of Ludlow Electric Light Department; Village of Lyndonville Electric Department; Village of Morrisville Water & Light Department; Village of Northfield Electric Department; Village of Orleans Electric Department; Town of Readsboro Electric Light Department; and Swanton Village, Inc. Electric Department.

In this Order, we conclude that this proceeding should not be bifurcated. As explained below, this conclusion is based on: (1) our determination that it would be difficult for the Board to decide whether or not to change the EEU structure without evidence regarding what a new structure might look like; and (2) concerns regarding delaying the resolution of this proceeding.

II. PARTIES' POSITIONS

IBM requested bifurcation of this proceeding because it believes it would be most productive to resolve the threshold question of which model (contract or appointment) will be used, before focusing on the details of the selected model.

AIV supports IBM's request to bifurcate this proceeding. AIV argues that bifurcation would be beneficial for the following reasons:

- Bifurcation would enable an appropriate level of attention to be focused on arguments for and against changing the current contract model. (AIV asserts that discussion has primarily focused on the details of an appointment model and insufficient attention has been paid to the arguments for and against changing the current contract model.)
- Bifurcation would be the most efficient way of addressing the threshold question of whether the overall structure should be changed because it would avoid the need for parties to prepare arguments against an appointment model at the same time as arguments for recommended details of an appointment model should one be adopted. In addition, it could obviate the need for parties to spend time on the details of an appointment model if the Board were to decide to continue with the contract model.
- Bifurcation would help inform and focus subsequent testimony and discussion, regardless of whether the Board decided to stay with a contract model or move to an appointment model.

AIV asserts that bifurcation would not unduly delay this docket because all arguments for and against changing the contract model would need to be addressed regardless of whether the docket is bifurcated. Therefore, according to AIV, a unified process does not present sufficient time savings to outweigh the benefits AIV attributes to bifurcation. AIV argues that this process should focus on obtaining the best results, not the quickest results.

CLF opposes bifurcation of this proceeding for two reasons. First, CLF asserts that bifurcation is unnecessary. According to CLF, since all the issues regarding possible alternative EEU structures have already been considered by the parties during their discussions over the last

two years, there is no reason to separate the issues now. In addition, CLF claims that IBM has identified no individual interest that would be benefitted by bifurcation and has provided no reason why bifurcation would be helpful to the process or decision-making. CLF asserts that bifurcation would lead to a "piecemeal" evaluation by the Board, and that providing the Board with overall recommendations that are supported by evidence would better facilitate determining the best overall structure. Second, CLF argues that bifurcation would result in unreasonable delay. CLF asserts that "the failure to resolve issues in this case more quickly has resulted in budget, contract, operational and investment decisions being made based on shorter term time horizons than would be most beneficial for Vermont ratepayers."³ According to CLF, it is unreasonable to further delay this proceeding, thereby continuing this situation and not providing a resolution that addresses the shortcomings of the current structure that were previously identified by the Board.

CVPS opposes bifurcation of this proceeding. CVPS asserts that it does not appear that granting IBM's request would simplify or expedite the resolution of this proceeding, or help to avoid duplication of effort by the Board or parties. This is because, according to CVPS, in order for parties to determine whether a change to a different structure is reasonable and appropriate, some understanding of the terms and conditions of the competing structures must be developed. In addition, CVPS argues that any consideration of EEU structure issues would require a full elaboration of the strategies that could be deployed to address concerns raised by the Board in its July 13, 2007, memorandum concerning the process to consider changing the EEU model. According to CVPS, such elaboration could not occur without litigating the details of the various models.

The DPS opposes bifurcation of this proceeding because bifurcation could delay the ultimate resolution of this docket which, according to the DPS, "is neither necessary nor in the best interests of Vermont ratepayers."⁴ The DPS recommends that, if the Board decides to bifurcate this proceeding, the initial phase should be held in advance of the technical hearings currently scheduled for September. The DPS asserts that if the Board were able to make its

3. Letter from Sandra Levine, Senior Attorney, CLF, to Susan Hudson, Clerk, Board, dated June 15, 2009, at 2.

4. Letter from Jeanne Elias, Special Counsel, DPS, to Susan M. Hudson, Clerk, Board, dated June 15, 2009.

decision on the overall structure without a technical hearing, possibly in a preliminary ruling, that might facilitate resolution of the remaining issues in the docket.

GMP opposes bifurcation of this proceeding and concurs with CVPS's position. GMP asserts that it will be more productive to resolve the issues presented by this docket in one proceeding.

GMEU opposes bifurcation of this proceeding, and joins in CLF's comments.

VEIC opposes bifurcation of this proceeding. VEIC asserts that bifurcation "will serve only to further delay resolution of a process that has already been unnecessarily prolonged."⁵ VEIC notes that it has been almost two years since the Board issued its July 13, 2007, memorandum that began discussions regarding the EEU structure. According to VEIC, extensive work regarding issues associated with alternative EEU structures occurred during the first year after the issuance of the Board's memorandum. However, VEIC asserts that during the second year following the memorandum's issuance, there has been little change to the list of issues that remain unresolved and little new information has been contributed, particularly with respect to the fundamental issue of whether to proceed to an appointment model.⁶ VEIC claims that there is no benefit to either the Board or the parties from bifurcation. VEIC asserts that a unified proceeding would preserve the rights of those parties opposed to changing the structure as well as the interests of parties who believe that the Board should change the structure to an appointment model in a timely manner.

VELCO opposes bifurcation of this proceeding because, according to VELCO, it is not clear that a bifurcated proceeding will be conducive to expedition and economy, and because the parties requesting bifurcation will not be prejudiced by a single, unified proceeding.

III. DISCUSSION AND CONCLUSION

After considering all the arguments raised in the parties' filings, we conclude that this proceeding should not be bifurcated. We reach this conclusion primarily because, if we bifurcate this proceeding, we will not have all the information we need to decide whether to continue to

5. Letter from Blair Hamilton, Policy Director, VEIC, to Susan Hudson, Clerk, Board, dated June 15, 2009.

6. According to VEIC, the one significant exception to this assertion is the findings of the consultant engaged by the DPS earlier this year to provide expert advice to the DPS in this matter.

use the contract model or to change the EEU structure. Specifically, without the details of what a new structure might look like, we will not be able to effectively compare the alternatives. Given the EEU's importance to Vermont electric ratepayers and the state, we determine that it is appropriate to organize this proceeding so that we are provided with the information we need to make a fully informed decision regarding the EEU's overall structure. We expect this information to include both arguments for and against changing the overall structure as well as positions regarding the details of a possible alternative structure.

Another reason for our conclusion that this proceeding should not be bifurcated is our concern that bifurcation could delay the resolution of this proceeding, a concern shared by many parties. If we were to bifurcate this proceeding and determine that a new model should be used, a second round of hearings would be necessary and the schedule for this proceeding would be extended.

We recognize that if we were to bifurcate this proceeding and determine that the contract model should continue to be used, a second phase of this proceeding might not be necessary. If that were to occur, a bifurcated proceeding might be resolved faster than a unified proceeding, and the parties may have needed to utilize fewer resources than they would have if the proceeding were unified. We do want to minimize the workload for all parties, and ensure an efficient resolution to this docket. However, this desire does not outweigh the necessity of providing us the information we require to make an appropriate decision regarding the EEU's overall structure. Therefore, we are not persuaded that bifurcation would be a more efficient means of resolving the issues in this proceeding.

Finally, we acknowledge that some parties hold that bifurcation might help inform and focus subsequent testimony and discussion, including possibly facilitating resolution of the remaining issues in the docket. While we generally encourage parties to negotiate, in this particular instance we are unwilling to delay this docket for further negotiations. Parties have engaged in discussion of issues associated with changing the EEU structure for almost two years. It is time for the Board to resolve these issues.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. International Business Machines Corporation's request to bifurcate this proceeding is denied.
2. Prefiled testimony, rebuttal prefiled testimony and the technical hearings shall address all issues in this proceeding.
3. The schedule for this proceeding shall remain as previously established, with prefiled testimony due June 26, 2009, prefiled rebuttal testimony due July 10, 2009, and technical hearings on September 15-17, 2009.

Dated at Montpelier, Vermont, this 19th day of June, 2009.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: June 19, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)